

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE,
FRANCES ELAINE PIDDE,¹
JAMES CICHANOPSKY,
ROGER MILLER,
GEORGE NOWLIN and
RONALD HITT,

Plaintiffs,

CASE NO. 2:04-CV-70592
JUDGE PATRICK J. DUGGAN
MAGISTRATE JUDGE PAUL J. KOMIVES

v.

CNH AMERICA, L.L.C. and
CNH GLOBAL N. V.,

Defendants.

ORDER REGARDING PLAINTIFFS' NOVEMBER 19, 2013 MOTION TO COMPEL
(Doc. Ent. 373)

A. Plaintiffs' November 19, 2013 Motion to Compel

Currently before the Court is plaintiffs' November 19, 2013 motion to compel third party subpoena response. Doc. Ent. 373. Therein, plaintiffs argue that (I) the third party subpoena to Towers Watson, defendant's actuary, should be enforced, and (II) the third party subpoena to Scott Macey, defendant's expert witness, should be enforced. Doc. Ent. 373 at 14-17.

On December 2, 2013, plaintiffs filed a notice of withdrawal (Doc. Ent. 377) of their motion related to the Towers Watson subpoena, only. On December 6, 2013, CNH filed a response. Doc. Ent. 383. On December 12, 2013, the parties filed a joint list of resolved and

¹On April 19, 2013, plaintiffs informed the Court of the death of plaintiff Frances Elaine Pidde. Doc. Ent. 343.

unresolved issues (Doc. Ent. 384 at 1-2), attached to which is a twelve (12) page chart (Doc. Ent. 384 at 3-14).

B. Discussion

1. Judge Duggan referred this motion to me for hearing and determination. Doc. Ent. 374. A hearing on this motion was noticed for December 16, 2013. *See* Doc. Ent. 380, Doc. Ent. 381.

On the date set for hearing, attorney Darcie R. Brault appeared on behalf of plaintiffs and attorney Joshua David Rogaczewski (Washington, D.C.) appeared on behalf of defendant CNH. I spoke with counsel for the parties off the record, at which time counsel informed me that they anticipated reaching an agreement on all but Item No. 16 of the subpoena to Macey.² Item No. 16 seeks:

All documents relating to the purpose or mission of the ERISA Industry Committee, to the Committee's charter, by-laws or other organizational documents, to your position and contractual employment arrangement with that Committee, to your compensation with that Committee and to corporate, association or individual funding of the Committee for the last five years; as well as all copies of all briefs, proposed legislation, press releases and other formal communications, blog posts and other written or electronic communications related to retiree benefit issues.

See 373-8 at 7 ¶ 16, Doc. Ent. 384 at 13-14.

2. On December 19, 2013, plaintiffs filed a supplemental submission. Doc. Ent. 385.

3. On December 20, 2013, CNH filed a response. Doc. Ent. 386.

4. By a letter dated January 17, 2014, counsel for CNH informed the Court that plaintiffs had completed their deposition of CNH expert Scott Macey. According to defense counsel,

²On December 17, 2013, plaintiffs' counsel submitted plaintiffs' proposed order re: plaintiffs' motion to compel third party subpoena response. On December 20, 2013, defense counsel submitted a proposed order denying plaintiffs' motion to compel further production from Scott Macey.

production of the requested ERIC documents from Mr. Macey “would be largely if not completely duplicative of the deposition testimony.”

C. Order

Upon consideration, no later than January 29, 2014, plaintiffs SHALL file a response to CNH’s January 17, 2014 letter. Plaintiffs’ filing SHALL clearly indicate whether there are any remaining issues set forth in plaintiffs’ November 19, 2013 motion to compel (Doc. Ent. 373) upon which the Court must rule.

If there are no such remaining issues, plaintiffs SHALL file a notice of withdrawal of their motion (Doc. Ent. 373) in CM / ECF. Otherwise, the Court will issue a ruling regarding whatever issues remain from plaintiffs’ November 19, 2013 motion to compel (Doc. Ent. 373).³

IT IS SO ORDERED.

The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of receipt of a copy of this order within which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).

	<u>s/ Paul J. Komives</u>
	PAUL J. KOMIVES
Dated: <u>January 22, 2014</u>	UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: January 22, 2014	<u>s/ Lisa C. Bartlett</u>
	Case Manager

³Plaintiffs’ December 27, 2013 motion to compel (Doc. Ent. 388), plaintiffs’ December 27, 2013 motion to extend (Doc. Ent. 389) and CNH’s January 15, 2014 contingent motion to compel (Doc. Ent. 395) will be addressed under separate cover.

